UNITED NATIONS

THIRD CONFERENCE ON THE LAW OF THE SEA

PROVISIONAL

For participants only

A/CONF.62/C.2/SR.5
18 July 1974

ORIGINAL: ENGLISH

Second Session

SECOND COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE FIFTH MEETING

Held at the Parque Central, Caracas,
on Wednesday, 17 July 1974, at 3.40 p.m.

Chairman:	Mr. AGUILAR	Venezuela
Rapporteur:	Mr. NANDAN	Fiji

CONTENTS

Corrections to this record should be submitted in one of the four working languages (English, French, Russian or Spanish), preferably in the same language as the text to which they refer. Corrections should be sent in quadruplicate within five working days to the Chief, Documents Control, Room 9, Nivel Lecuna, Edificio Anauco, and also incorporated in one copy of the record.

AS THIS RECORD WAS DISTRIBUTED ON 18 JULY 1974, THE TIME-LIMIT FOR CORRECTIONS WILL BE 25 JULY 1974.

The co-operation of participants in strictly observing this time-limit would be greatly appreciated.

TERRITORIAL SEA (continued)

Mr. CALERO RODRIGUEZ (Brazil) said that the drafts before the Committee, which provided that the sovereignty of the coastal State gave it jurisdiction over a belt of sea adjacent to its land territory, were only restating existing international law. Another principle of international law was that the breadth of the territorial sea was established by the coastal State itself. There was no rule of customary or conventional international law which established either the breadth of the territorial sea or a limit beyond which States could not establish for themselves the breadth of that sea. When the old customary limit of three miles had become obsolete and wider limits had become customary, three international conferences had been unsuccessful in establishing new limits.

When several countries, including his own, had established a 200-mile limit for their territorial sea they had taken into account three legal considerations: first, a territorial sea was recognized by international law; secondly, international law empowered the coastal State itself to establish the breadth of its territorial sea; thirdly, international law did not set a maximum limit for the breadth of the territorial sea. The 200-mile limit had therefore been established within the framework of existing international law. The extensions had been made with a view to giving effect to the Declaration of Lima (1970), which recognized, inter alia, the inherent right of the coastal State to "explore, conserve and exploit the natural resources of the sea adjacent to its coasts and the soil and subsoil thereof, as well as of the continental shelf and its subsoil, in order to promote the maximum development of its economy and to raise the level of living of its people". Neither the Declaration of Lima nor the Declaration of Montevideo laid down a 200-mile limit as a general criterion. Both stated that the limits must be set in accordance with the geographical, geological and biological conditions of the area and the need for a rational utilization of its resources.

The "legitimate priority" of the interests of the coastal States mentioned in the Declaration of Montevideo was now universally recognized. Few delegations, if any, would deny the need to spell out in the convention the Conference was to adopt the rights of the coastal State over an adjacent sea-belt up to 200 miles in breadth.

For some delegations, a 12-mile limit and the traditional régime should be accepted. In that belt of sea the coastal State was sovereign and it had only to

/...

(Mr. Calero Rodrigues, Brazil)

allow innocent passage of foreign ships. For the zone beyond the 12-mile limit, there were various schools of thought. For some delegations, the coastal State would have sovereign rights with regard to the exploration and exploitation of the natural resources or over the resources themselves within an area not exceeding 200 miles in breadth, which would be called the patrimonial sea or the exclusive economic zone. As he understood it, most of the delegations which accepted that view agreed that the coastal State would have sovereign rights in the zone between the limits of its territorial sea and the limit of its economic zone. However, other delegations which were willing to accept the concept of the patrimonial sea or the exclusive economic zone, clearly wished that belt to be considered a part of the high seas in which the coastal State would have only certain specified preferential rights, not as a projection of its sovereignty but as a kind of contractual concession in a foreign area.

Lastly, there were others which considered that the belt of adjacent sea up to 200 miles in breadth was under the jurisdiction of the coastal State as a consequence of its sovereignty. For those delegations there were only two fundamental zones in the oceans, a national sea, extending up to 200 miles in breadth, and an international sea beyond that limit. Most of the countries which held that view called the waters adjacent to the shores of the coastal State its territorial sea. The proposal made by the representative of Ecuador at the previous meeting (A/CONF.62/C.2/L.10) was designed to make those views clear, and the Brazilian delegation therefore supported it. However, the concept of the territorial sea upheld by those countries was different from that of the traditional territorial sea. Some of the countries which claimed a 200-mile limit for their territorial sea were willing to recognize freedom of navigation and overflight in that zone; others, of which Brazil was one, had liberalized their concept of innocent passage so as to ensure that there would be no impediment to the passage of ships and aircraft, a necessity for international navigation, transport and communications.

One of the main handicaps with which delegations had to deal was the fact that they were trying to work out new concepts using a traditional terminology. Although the list of subjects and issues mentioned the territorial sea and the contiguous zone before the high seas, and also mentioned the economic zone, it seemed likely that the Conference would end up by defining only two broad zones, each under a precise legal régime, the international sea and the national sea. For one as for the other an

/...

adequate set of legal rules had to be established, and even the traditional freedoms of the seas would have to be subject to regulation in the international zone. The common interest in such activities as navigation, fisheries, the exploitation of mineral resources and the control of pollution would impose mandatory norms of behaviour on all States exercising any activity in that zone. Without prejudice to the competence of international bodies, the residual powers not falling within the set of norms he had mentioned could be exercised by all States. In the same way, the rights and duties of States in the national maritime zone would have to be spelt out. In his view, it was possible to prescribe norms that would guarantee the legitimate interests of both the coastal State and of third States with regard to navigation, fisheries, the laying of cables and pipelines and any other reasonable matter.

Since it was normal for the residual powers in the international zone to be exercised by all States, it was also normal that in the national zone such residual powers should be reserved for the coastal State. In that way third States would in fact enjoy a double guarantee: their interests would be clearly enunciated as legal rights, and whenever the coastal State exercised any of its residual powers it would have to take into account the general principles which had led to the enunciation of those rights.

The comprehensive approach that he had outlined might be summarized as follows: First, the Convention should define as specifically as possible rights and duties for the whole of the ocean space. Secondly, such rights and duties should be basically different for the two zones, national and international. Thirdly, in a national maritime zone the residual powers should be reserved for the coastal State; in the international maritime zone they should belong to all States. The Committee should bend its efforts to framing a specific definition of the rights and duties of each State in each of the two maritime zones. That should be done without attempting to tie the rights and duties to any particular basic position held by delegations. Only after the rights and duties had been defined should an attempt be made to fit them into a general framework, which should encompass as many of the basic positions as possible. The Committee should have in mind Hans Kelsen's distinction between norms of international law, which were statements of mandatory behaviour, and rules of international law, which were legal concepts used to describe international law. If the Conference was to be successful in its task, it should go straight to the heart of the matter and concentrate on drafting a truly normative order for the sea.

/...

(Mr. Calero Rodrigues, Brazil)

allow innocent passage of foreign ships. For the zone beyond the 12-mile limit, there were various schools of thought. For some delegations, the coastal State would have sovereign rights with regard to the exploration and exploitation of the natural resources or over the resources themselves within an area not exceeding 200 miles in breadth, which would be called the patrimonial sea or the exclusive economic zone. As he understood it, most of the delegations which accepted that view agreed that the coastal State would have sovereign rights in the zone between the limits of its territorial sea and the limit of its economic zone. However, other delegations which were willing to accept the concept of the patrimonial sea or the exclusive economic zone, clearly wished that belt to be considered a part of the high seas in which the coastal State would have only certain specified preferential rights, not as a projection of its sovereignty but as a kind of contractual concession in a foreign area.

Lastly, there were others which considered that the belt of adjacent sea up to 200 miles in breadth was under the jurisdiction of the coastal State as a consequence of its sovereignty. For those delegations there were only two fundamental zones in the oceans, a national sea, extending up to 200 miles in breadth, and an international sea beyond that limit. Most of the countries which held that view called the waters adjacent to the shores of the coastal State its territorial sea. The proposal made by the representative of Ecuador at the previous meeting (A/CONF.62/C.2/L.10) was designed to make those views clear, and the Brazilian delegation therefore supported it. However, the concept of the territorial sea upheld by those countries was different from that of the traditional territorial sea. Some of the countries which claimed a 200-mile limit for their territorial sea were willing to recognize freedom of navigation and overflight in that zone; others, of which Brazil was one, had liberalized their concept of innocent passage so as to ensure that there would be no impediment to the passage of ships and aircraft, a necessity for international navigation, transport and communications.

One of the main handicaps with which delegations had to deal was the fact that they were trying to work out new concepts using a traditional terminology. Although the list of subjects and issues mentioned the territorial sea and the contiguous zone before the high seas, and also mentioned the economic zone, it seemed likely that the Conference would end up by defining only two broad zones, each under a precise legal régime, the international sea and the national sea. For one as for the other an

/...

(Mr. Calero Rodriguez, Brazil)

adequate set of legal rules had to be established, and even the traditional freedoms of the seas would have to be subject to regulation in the international zone. The common interest in such activities as navigation, fisheries, the exploitation of mineral resources and the control of pollution would impose mandatory norms of behaviour on all States exercising any activity in that zone. Without prejudice to the competence of international bodies, the residual powers not falling within the set of norms he had mentioned could be exercised by all States. In the same way, the rights and duties of States in the national maritime zone would have to be spelt out. In his view, it was possible to prescribe norms that would guarantee the legitimate interests of both the coastal State and of third States with regard to navigation, fisheries, the laying of cables and pipelines and any other reasonable matter.

Since it was normal for the residual powers in the international zone to be exercised by all States, it was also normal that in the national zone such residual powers should be reserved for the coastal State. In that way third States would in fact enjoy a double guarantee: their interests would be clearly enunciated as legal rights, and whenever the coastal State exercised any of its residual powers it would have to take into account the general principles which had led to the enunciation of those rights.

The comprehensive approach that he had outlined might be summarized as follows: First, the Convention should define as specifically as possible rights and duties for the whole of the ocean space. Secondly, such rights and duties should be basically different for the two zones, national and international. Thirdly, in a national maritime zone the residual powers should be reserved for the coastal State; in the international maritime zone they should belong to all States. The Committee should bend its efforts to framing a specific definition of the rights and duties of each State in each of the two maritime zones. That should be done without attempting to tie the rights and duties to any particular basic position held by delegations. Only after the rights and duties had been defined should an attempt be made to fit them into a general framework, which should encompass as many of the basic positions as possible. The Committee should have in mind Hans Kelsen's distinction between norms of international law, which were statements of mandatory behaviour, and rules of international law, which were legal concepts used to describe international law. If the Conference was to be successful in its task, it should go straight to the heart of the matter and concentrate on drafting a truly normative order for the sea.

/...

Mr. RASHID (Bangladesh) introduced his delegation's proposal (A/CONF.62/C.2/L.7) concerning the nature and characteristics of the territorial sea. His delegation supported the traditional concept of the territorial sea, namely, that every coastal State exercised absolute sovereignty beyond its land territory and internal waters over a belt of sea adjacent to its land territory, subject only to the right of innocent passage. Accordingly, his delegation supported the concept on which the United Kingdom proposal (A/CONF.62/C.2/L.3) and the Indian proposal (A/CONF.62/C.2/L.4) were based, but it thought that paragraph 1 of its own proposal made the essential point clearer. The definition of the nature and characteristics of the territorial sea must not be ambiguous or refer to any other rules of law. It should be self-contained and it should be interpreted with reference to the provisions of the Convention and to nothing else. Thus, his delegation could not accept the expression "other rules of international law" in the United Kingdom and Indian texts, since it was susceptible of different interpretations.

His country favoured a territorial sea of 12 miles and an economic zone of 200 miles, measured from the baselines. Bangladesh was a coastal State with more than 1,000 miles of indented coastline and many offshore islands. In the monsoon season the rivers of the Ganges delta deposited more than 10 million tons of silt in the Bay of Bengal. Thus, the Ganges delta had no stable low-water line and its navigable channels were continually changing. The only feasible method of demarcation of the landward and seaward areas was a baseline expressed in terms of a certain depth. The present method of determining the baselines, set forth in articles 3 and 4 of the Geneva Convention on the Territorial Sea, did not take account of the geographical peculiarities of the coastline in States such as his own. The provisions of the new Convention dealing with the drawing of baselines should, therefore, take account of such geographical and hydrographical peculiarities of the coastal States as had legal relevance. At the appropriate time his delegation would submit a text concerning the drawing of baselines in such cases.

Mr. ROE (Republic of Korea) said that because of its geographical location and special security concerns his country had some particular problems with regard to the territorial sea and the right of innocent passage. It was one of the few countries which had not yet declared the breadth of its territorial sea, in expectation

(Mr. Roe, Republic of Korea)

that a general consensus would be reached at the Conference. He reaffirmed his country's support for a maximum limit of 12 nautical miles, measured from appropriate baselines, in accordance with the provisions of the 1958 Geneva Convention.

His delegation thought that the United Kingdom proposal was a good basis for consideration of the question of the passage of foreign vessels through the territorial sea. The proposal was an attempt to reconcile the general interests of international communications with the particular and very grave security concerns of coastal States. In general, his delegation could accept the United Kingdom text, but he wished to comment on two points.

Firstly, article 16 of the text did not provide a satisfactory definition of what constituted innocent passage. Paragraph 2 should have stated positively that the passage of a foreign ship should be considered not innocent if such and such acts were committed, instead of the negative formulation used. Furthermore, in enumerating the acts which were not innocent, the article omitted some important acts which were of major concern to coastal States: acts such as espionage, the collecting of information, or propaganda against the coastal State, any other warlike or hostile acts or acts which did not have a direct bearing on the passage. Such acts should be specifically mentioned in order to avoid any ambiguity or misinterpretation.

Secondly, the passage of warships through a territorial sea which did not constitute a necessary and important route for international navigation should be differentiated from the passage of other types of vessel. A coastal State should have the right to require foreign warships passing through its territorial sea to give prior notification of this passage or to obtain prior authorization for it.

Mr. ZULETA (Colombia) said that his delegation's position concerning the nature and characteristics of the territorial sea was the same as that of many delegations from different parts of the world and with different levels of development and varying legal traditions. According to that position, the territorial sea was defined as a belt of 12 nautical miles measured from the baselines, over which the coastal State exercised full sovereignty, subject to the right of innocent passage. The 12-mile territorial sea was necessarily linked to the acceptance by the international community of an economic zone or patrimonial sea of a maximum breadth of 200 nautical

/...

(Mr. Zuleta, Colombia)

miles. In that zone the coastal State was to have sovereign rights with regard to the exploration and exploitation of the renewable and non-renewable natural resources situated in the superjacent waters or in the sea-bed and the subsoil thereof. It was also to have rights and duties with respect to the protection of the marine environment and the control of scientific research. His delegation understood the combination of territorial sea and economic zone to be an indivisible whole. Such a formulation would reconcile the economic goals of the developing countries, which wished to have jurisdiction over the natural resources adjacent to their coasts, with the need to maintain the right of free navigation and overflight and the laying of cables and pipelines.

The notions of territorial sea and economic zone must of course be governed by a clear method of delimitation between States with opposite or adjacent coasts and, if necessary, by a procedure for the peaceful solution of disputes. The concept of an economic zone should be clearly formulated in the Convention so that its demarcation would not lead to the closing of any State's territorial or internal waters.

Mr. BAKULA (Peru) said that his delegation supported the proposal submitted by Ecuador (A/CONF.62/C.2/L.10) because it corresponded to the rights proclaimed by his own country, which considered that a territorial sea of 200 miles was a reasonable one for many regions but should not be compulsory for all States. The desire to limit the territorial sea to 12 miles was understandable in narrow seas where the distance between States did not permit a higher limit, but the 12-mile limit was not justified in open seas and oceans where States were separated by hundreds of miles. Within the maximum limit, States must be able to establish a breadth of territorial sea suited to the realities of their region. The essential difference between the two positions was that some States wished to impose on the whole world a limit of 12 miles, which was insufficient to protect the rights of other nations, while other States accepted that there could be different limits and that the 12-mile and 200-mile limits could coexist, subject to the protection of the general interests of international communications.

Some States maintained that the coastal States could not be granted residual rights of sovereignty or jurisdiction over a territorial sea or economic zone of 200 miles, but that three types of jurisdiction must be recognized: that of the coastal States, that of the flag States, and that of the international authority. That argument might

/...

(Mr. Bakula, Peru)

be acceptable if the space in question was situated in the middle of the ocean where all States had equal rights, but it was logical that certain coastal States should exercise residual rights over the waters adjacent to their coasts in order to protect the interests of their peoples.

The crux of the matter was not the name given to the seas adjacent to the coastal States, but the nature and scope of the rights granted to those States. His delegation would consider any names, such as national zone or national sea, as long as it was understood that the coastal State exercised sovereignty and jurisdiction, without prejudice to the establishment of a dual régime for navigation guaranteeing freedom of passage, or to the adoption of internal regulations guaranteeing national peace and security.

Mr. JACOVIDES (Cyprus) drew attention to his country's proposal on the breadth of the territorial sea (A/AC.138/SC.II/L.19) which appeared on page 10 of volume III of the report of the Sea-Bed Committee (A/9021). He recalled that it had been decided that all documents of the Sea-Bed Committee were deemed to be before the Second Committee. The reasons for his delegation's position had been given in the Sea-Bed Committee and in its general statement in plenary meeting.

Mr. LUPINACCI (Uruguay) expressed his delegation's support for the proposal made by the delegation of Ecuador at the preceding meeting (A/CONF.62/C.2/L.10), which was basically the same as that made by his country (A/AC.138/SC.II/L.24) at the July 1973 session of the Sea-Bed Committee.

At the present stage in its work, the Second Committee should not spend too much time on terminology. It was more important to determine the legal nature of the régimes applicable to different zones. His delegation supported the establishment of different régimes in the territorial sea, since the basic principles of international maritime law were still valid because they were based on logic, although they must be adapted to present-day realities. Two fundamental principles governed the zones of the sea, one based on the principle of sovereignty and the other on that of freedom, which would always underlie any formulation adopted. They were represented by the two traditional concepts of the territorial sea and the high sea. Any formulation adopted would always mean that one of those principles would prevail over the other, which would be expressed in the final instance by its residual application. Whatever limitations might be applied to the sovereignty of the coastal State over the territorial sea, such as the right of innocent

/...

passage, they were in essence the residual application of the principle of sovereignty. The representative of Pakistan had said that there was little difference between a territorial sea with different régimes and the concept of a 12-mile territorial sea combined with an economic zone or patrimonial sea of up to 200 miles, and that in the latter case the territorial sea and the economic zone formed a single unit, which according to the representative of Colombia should constitute an indivisible whole. The concept of different régimes in the territorial sea was therefore more reasonable, because it maintained the single concept of the zone of sovereignty of the coastal State, while allowing different rights for international communication within that zone. His delegation therefore supported the proposal of the representative of Ecuador (A/CONF.62/C.2/L.10) provided that, once the nature and extent of the rights of the coastal State in its adjacent sea and those of third States and the international community had been clearly defined, the Committee agreed to abandon the old terminology and work out a new one.

Mr. ZOTIADES (Greece) said that the Conference seemed to have reached near unanimity on a limit of 12 nautical miles for the territorial sea and on the general and uniform application of that rule. His delegation welcomed the Chairman's statement that the Conference's aim was to draft universal rules of general application. It found it juridically difficult to accept an exceptional legal régime for certain seas such an enclosed and semi-enclosed seas. Although all coasts had special characteristics, the rule of law should govern all cases and not leave a wide margin for deviation from basic international law.

The point had been made that in semi-enclosed seas, the limit of the territorial sea should be determined jointly by opposite or adjacent States. The social needs that had prompted the preparation of the Conference would not be realized if the delimitation of maritime boundaries was left to agreement among States in accordance with equitable principles independent of those of international law. The expression "equitable principles" itself introduced an element of subjectivity and ambiguity.

On the basis of international theory and practice, the median line or equidistance principle embodied in article 12 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone and widely used in bilateral conventions should apply in the case of narrow seas.

It had also been said that the 12-mile limit should not deprive States of access to the high seas, but that would only be valid if the right of innocent passage did not apply to the legal régime of the territorial sea.

/...

(Mr. Zotiades, Greece)

The Greek delegation had submitted its proposal (A/AC.138/L.17) to the Sea-Bed Committee in the sincere belief that the median line of equidistance should not be either an arbitrary or an absolute rule. That proposal provided the necessary flexibility by the interrelation of the two elements of agreement and equidistance. The principle of the median line placed States in a position of equality in relation to neighbouring States which might be tempted to bargain in a legal vacuum. Failing agreement reached freely and under conditions of equality, the equidistance principle should come into operation as the applicable rule of international law. The existence of the guiding rule of law would mitigate any excessive demands based on special circumstances or on the novel and unacceptable idea put forward at the preceding meeting that islands, per se, constituted in general special circumstances.

The representatives of both Finland and Uruguay had referred to the notion of territorial sovereignty. As repeatedly declared by the International Court of Justice, territorial sovereignty embraced the sum total of the territory of the State, be it continental or insular. The judgement of the International Court of Justice in the North Sea continental shelf cases, paragraph 57, accepted that deviation from the median line of equidistance could not be made in the case of islands but only in that of islets or rocks. In any case, that judgement of the International Court was not relevant to the delimitation of the territorial sea because it referred to that of the continental shelf. Furthermore, one of the parties had not ratified the Geneva Convention of 1958. It might however be of interest to recall that in that judgement, the Court had observed, with reference to the equidistance principle, that no other method of delimitation had the same practical convenience or certainty of application.

Mr. ROBINSON (Jamaica) reiterated his delegation's statement in the Sea-Bed Committee that Jamaica did not support the concept of the economic zone or the patrimonial sea, but as a compromise it was prepared to accept the establishment of such zones provided that right of access was granted to the geographically disadvantaged developing countries in order to exploit their resources. That position was clearly set forth in the draft articles on regional facilities for developing geographically disadvantaged coastal States (A/AC.138/SC.II/L.55) submitted to that Committee in 1973. His delegation would be unable to accept the concept of the economic zone unless those draft articles were not only embodied in the future convention but also so placed that it was evident that they were an essential qualification of the establishment of the zone itself.

Mr. SANTOS (Philippines) said that his delegation had no objection to the establishment of 12 nautical miles as the breadth of the territorial sea if that was generally acceptable to the Conference. He wished, however, to draw attention to the draft articles on historic waters (A/AC.138/SC.II/L.46) submitted by his delegation to the Sea-Bed Committee in 1973. The substance of those draft articles was that any State which had already established a territorial sea with a breadth greater than the maximum provided in the convention to be adopted should not be subject to the limit set out therein. The 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, article 7, paragraph 6, recognized the historic rights of coastal States to "historic" bays regardless of their area or width of entrance. A preparatory document for the First Conference on the Law of the Sea had pointed out that historic rights were claimed in respect not only of bays but also of other maritime areas. That concept had also been recognized by Sir Gerald Fitzmaurice, now one of the Judges of the International Court of Justice, in an article in the British Yearbook of International Law, volume 30, 1952. His country's position on that historic principle had been expressed not only at meetings of the Sea-Bed Committee but also at sessions of the General Assembly. At the 1973 summer session of the Sea-Bed Committee, the head of the Philippine delegation had outlined the history of the territorial waters claimed by his country. Those waters had passed from the sovereignty of Spain to that of the United States in 1898 and their area was specified in a law passed by the latter country in 1932. When the Philippines had become independent in 1946, it had continued to exercise sovereignty over those waters, as expressly stated in its Constitution and statutes. The proposals made by the Philippine delegation at that session had been that the exceptional status of "historic" waters should be stated in positive law and that the territorial sea under historic title should be excluded from the rules governing the delimitation of that sea. There seemed no valid reason why only historic bays should be excepted from the applicable rules of international law. If no exception was made of other historic waters, the Philippine delegation's acceptance of an approved breadth of territorial sea of 12 miles would deprive it of about 230,000 square miles of territorial sea. The head of the Philippine delegation had therefore announced the Philippines' intention of seeking recognition of the present limits of its territorial waters in codified international law at the Third Conference on the Law of the Sea.

/...

Mr. GALINDO POHL (El Salvador) said that the Salvadorian proposal (A/CONF.62/C.2/L.10) was most pertinent. It was necessary to identify the different trends of thought and to find the common denominator, which would be slightly different in each case. The Ecuadorian proposal was a very precise and extreme expression to one of those trends. His country had its own views on the Ecuadorian position, but he did not wish to discuss it in detail at the present time.

El Salvador had a very special position regarding the use of terms, which was not tied to any particular position. It felt that substance was more important than terminology, but Ecuador had insisted that everything should be given a specific name.

He wished to comment on the word "territorialism". A quarter of a century earlier, when some countries had begun to claim a greater breadth of territorial sea than had then been customary, they had used the terms that were then in current use, but they had used them with a new meaning. The result was that confusion had arisen about the actual meaning of those terms. The idea of territorialism was, paradoxically, not indissolubly linked to the idea of the territorial sea as defined in the 1958 Convention on the Territorial Sea and the Contiguous Zone; but a separation of the two might destroy much that was of value in the term. When those countries used the word "territorial", they did not mean that they wished to apply the old idea; it was now part of a new and broader concept - that of an extended territorial sea.

Territorialism was mentioned in conjunction with sovereignty, but it was not absolute sovereignty. In a zone with a régime involving innocent passage and freedom of navigation, sovereignty could not but be limited. Why was the word sovereignty used in that case? It was a concise way of referring to the powers of a State and it was a short and convenient way of saying that the residual powers were to be exercised by the coastal State. If that formula was not adopted, it would be necessary to enumerate those powers to ensure that all the rights of the coastal State were included in the term "sovereignty".

Territorialism was consonant with a plurality of régimes. It was not only an extension of the traditional territorial sea but part of a broader synthesis in which the traditional concept found its place together with new elements. There might be several different régimes, some of which had been mentioned already, but their common denominator was the idea of sovereignty. Viewed from the angle of space, sovereignty was the power of the State in a specific space, but that power was limited. Although

/...

(Mr. Galindo Pohl, El Salvador)

there were two components in the idea of territorialism construed as a limited sovereignty, one of those could be divided into two. The two components were innocent passage and freedom of navigation. Innocent passage comprised two considerations, the security, and the economic rights and interests of the coastal State.

In the zone beyond the territorial sea, which was further from the shore of the coastal State, responsibility for security did not lie with the coastal State but was subject to international rules. The coastal State was only one member of the international community and therefore subject to those rules, but it had economic rights and interests in that zone as well.

The patrimonial sea was a way of defining the economic zone, but it was not the economic zone itself. It was possible to speak of a national zone, in which the coastal State guaranteed innocent passage, and a zone in which it had an economic interest. That zone could be given a proper name but in general it was referred to by the type of rights involved. Those embraced the authentic rights of the authentic international community, not the interests of the so-called international community, which were really the interests of the great Powers.

A new language and new techniques were required to define the rights of the coastal State, and those too were a common denominator of the Conference. The Committee should consider what techniques it was going to use to deal with those questions. The great majority was in favour of an international zone in which the coastal State would have significant rights but the authentic rights of the authentic international community would be safeguarded.

Mr. PLAKA (Albania) said that, now that the Committee was approaching the most important problems connected with the sea, it was time to consider the points of greatest concern to delegations and to map out strategies for the future.

The overwhelming majority of the participants - the countries of Asia, Africa and Latin America and other sovereign and peace-loving States - had declared their determination to defend their legitimate rights in the face of flagrant violations by the imperialist and colonial Powers. A new law of the sea was therefore required, for the old law of the sea had done nothing but perpetuate injustice and serve the political, military and economic interests of the great imperialist Powers. The

/...

(Mr. Plaka, Albania)

countries he had mentioned had also shown their desire to see that the new law of the sea should incorporate the changes introduced into the law of the sea by the practice of the sovereign coastal States. The major trend was toward a codification of the legal norms relating to the sea with a view to ensuring the national sovereignty and safeguarding the economic interests of the sovereign coastal States in their territorial waters.

The United States and the Soviet Union were opposed to that trend, however. They did not accept the changes introduced by the practice of the sovereign coastal States, particularly with regard to the breadth of their territorial sea, and were opposed to the efforts of those States to formulate a law of the sea that would be in harmony with their inalienable rights. The United States and the Soviet Union wished to impose on other sovereign States a 12-mile limit for their territorial sea, regardless of the fact that some countries had already extended their territorial sea beyond that point. Such an attitude was contrary to the principle that every country was free to define the limits of its territorial sea at a reasonable distance from its coast, provided it did not prejudice the interests of neighbouring countries or international navigation - a principle that had been invoked by the two super-Powers themselves in defining their own territorial sea. That principle should be strengthened by the convention to be adopted by the Conference. Such a strengthening was all the more necessary because the independence of the sovereign coastal States was threatened by the warships of the two super-Powers, which ranged up and down the oceans, passing close to the shores of other countries in pursuit of their policy of domination.

No international instrument of recognized legal value laid down a mximum limit of 12 nautical miles for the territorial sea, and even the previous conferences had failed to set such a limit. There were important considerations which militated in favour of an extension of the territorial sea. The most important was national security and the second was the fact that the fishing fleets of the two Powers he had mentioned pillaged the fishery resources of the other countries, even within their territorial waters, as in the case of Peru, Ecuador and other sovereign coastal States, whose territorial waters had been violated by the fishing fleets of the super-Powers.

Every sovereign State was entitled to set a limit of not less than 12 miles to its territorial sea. Albania itself was reconsidering the question of the breadth of its territorial sea with a view to its possible extension beyond the present 12-mile limit.

 /...

(Mr. Plaka, Albania)

His delegation understood the fully justifiable motives and the circumstances which had obliged some coastal States to extend their territorial waters up to a 200-mile limit. They had taken that decision for reasons of national security and to ensure the survival of their populations. As was well known, fishing was the principal means of livelihood for the peoples of Peru and Ecuador, for example.

His delegation supported the Ecuadorian proposal (A/CONF.62/C.2/L.10), which provided for a territorial sea 200 nautical miles in breadth. It also supported the position of the Latin American and other countries which maintained that the exclusive economic zone or patrimonial sea should extend up to 200 miles and should be under the sovereignty and national jurisdiction of the coastal State.

The super-Powers accepted the idea of an economic zone but they wished to apply a régime to it that would make it in effect an international zone. Moreover, they wished to make the economic zone coterminous with the territorial sea. There were no sound arguments in favour of that stipulation, for each country was free to decide the breadth of its territorial sea in accordance with its own circumstances.

The two Powers he had mentioned had proposed a package deal, the main purpose of which was to ensure free passage for their navies and air forces through and over straits that lay within the territorial waters of other States. That was not a fair deal. There was no reason why such passage should be a condition for the establishment of an exclusive economic zone.

Their attempts to internationalize the straits located on the limits of the territorial waters of the coastal States must be stopped, and the sovereignty of the coastal States over their straits must be secured. The coastal States had clearly defined their position in the general debate. They had no intention of preventing international traffic through the straits used for international navigation, but they were fully entitled to take whatever steps were necessary to protect their national security, particularly in view of the frequent and unjustified movements of the warships and military aircraft of the super-Powers through and over their territorial waters. The passage of warships through those waters and through straits located in territorial waters should be governed by the law of the coastal States; they should receive prior notification of such passage and no passage should be attempted without their consent. That would be in the best interests of international peace and security.

/...

(Mr. Plaka, Albania)

The discussions in the Second Committee should lead to the elaboration of a new law of the sea which would rule out domination and establish a régime of equity and justice, conditions favouring good-neighbourly relations and international co-operation, the economic development of the coastal and land-locked States, particularly the developing countries, and protect their interests and national security. In view of the efforts of the two super-Powers to sow discord among the coastal States and the land-locked and geographically disadvantaged countries, i.e., those that were interested in the establishment of an exclusive economic zone, and the straits States, the countries of Asia, Africa and Latin America and all other peace-loving countries should unite and fight for their legitimate rights. The problems of the sea with which the Committee had to deal were complex and there would be difficulties to surmount but all those problems should be resolved through consultation and direct and open discussion in the Committee itself. Delegations should not allow themselves to be inveigled into other discussions by indirect and covert approaches, particularly when the super-Powers were behind them.

No decision should be taken in haste. Each problem should be discussed in a spirit of justice, and there should be no infringement of the rights of sovereign States and peoples by a compromise which would safeguard only the interests of the super-Powers. Priority should be given to substance, and that must reflect and reinforce the inalienable rights of the peoples, their economic interests and their national security.

Everyone knew that if a new law of the sea was to emerge, it would be born from a struggle between the sovereign coastal States, which rightly wished to secure their inalienable rights, and the big imperialist maritime Powers, particularly the two that were seeking to preserve their military, political and economic interests and their privileged position with regard to the sea. The interests of those two groups of States were conflicting and mutually exclusive. For that reason, any compromise put forward at the instigation of the super-Powers carried with it a risk that damage would be done to the essential interests of the sovereign States and should therefore be rejected. The overwhelming majority of the participants in the Conference were sovereign and peace-loving States. They must defend their rights to the utmost, and not recoil before any pressure or blackmail from the two super-Powers; they would then be sure to triumph.

/...

(Mr. Plaka, Albania)

The Albanian delegation was ready to combine with other justice-loving countries in their efforts to achieve that end.

Mr. MOVCHAN (Union of Soviet Socialist Republics), speaking in exercise of the right of reply, said that a certain delegation had read out a text in plenary meeting and it now seemed that it was going to read the same text with regard to every agenda item. The Soviet delegation had already replied in plenary meeting to the effect that the topics before the Conference should be dealt with in a constructive spirit. Everyone present was tired of hearing the same tune. Was it not time to change the record? The statement he was referring to was certainly out of keeping with the general effort to work in harmony. His own delegation would continue to observe the Chairman's request that proceedings be conducted in a constructive manner.

Mr. PLAKA (Albania), speaking in exercise of the right of reply, said that the statement by the imperialist Union of Soviet Socialist Republics had merely underlined the validity of his own statement. The Soviet position was contrary to that of the majority of delegations and did not even warrant a reply. The Soviet Union wanted to sell its imperialist policy as a socialist policy but took fright when its mask was torn off. The Soviet policy of aggression and expansion was generally known and condemned. The purpose of his own delegation's statement had been to protect its national security, which was threatened by the Soviet war fleet.

The CHAIRMAN appealed to the Committee to conduct its business in a spirit of harmony. He had no wish to criticize the views of any delegation, but the Committee must focus on the substance of its work. There had already been a general debate in plenary meeting in which delegations had had the opportunity to express their general views on the law of the sea. He urged all delegations to avoid bringing up matters which would occasion the exercise of the right of reply.

ORGANIZATION OF WORK (continued)

Mr. KEDADI (Tunisia) said that, although the general discussion had been useful because it enabled many delegations which had not been members of the Sea-Bed Committee to express their views, it was now necessary to find means of speeding up the work of the present Committee. Since most of the draft articles submitted recently were

/...

(Mr. Kedadi, Tunisia)

very similar to those submitted to the Sea-Bed Committee, he was afraid that the discussion might merely duplicate that in the various sessions of that Committee unless a different approach was adopted.

From the discussion so far, he had identified three schools of thought, namely, those in favour of a territorial sea not exceeding 12 miles; those in favour of a narrow territorial sea linked to an economic zone not exceeding 200 miles in breadth, and those in favour of an extended territorial sea which would include that economic zone. The four main subjects under discussion were the right of innocent passage, the territorial waters of archipelagic States, full sovereignty for the coastal State over a limited zone and jurisdiction over a wider zone, and delimitation. It might be possible to begin by adopting a general text which reflected the basic ideas of each school of thought on each subject. Then the proponents of each school of thought could meet, if possible under the chairmanship of one of the Vice-Chairmen, to submit amendments to the basic text and try to reach agreement on a text acceptable to all. The Chairman would then reconcile the three points of view and produce a single text which would be the basis for drafting articles of the future convention related to the territorial sea.

The CHAIRMAN said that those suggestions were very similar to the one he intended to make to the officers of the Committee.

The meeting rose at 6.15 p.m.